



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS

Complainant

v.

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

Respondent

CASE NO. U-0613:1

DECISION NO. 91-85

APPEARANCES

Representing American Association of University Professors:

Thomas F. Hersey, Esq., Counsel

Representing University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esq., Counsel

Also appearing:

- Bronwyn Williams, U.N.H.
- Linda Robinson, U.N.H.
- Stephen Fan, A.A.U.P.
- L. C. Balling, A.A.U.P.
- Joan Tambling, U.S.N.H.
- Walter Eggers, U.N.H.
- John Lawson, U.N.H.
- Gary Wulf, A.A.U.P.

BACKGROUND

On December 10, 1990, the American Association of University Professors (AAUP) by its attorney Thomas F. Hersey, Esq., filed an unfair labor practice charge against the university of New Hampshire and Dale Nitzschke office of the president alleging a refusal to recognize certain members of the bargaining unit which had been certified under 273-A IX (d).

AAUP charged the university with failure to recognize certain members of the faculty who were not teaching on a full-time basis whose votes had been challenged by the university. It was the AAUP's position that some of the faculty members who were employed less than full-time were entitled to be in the unit. Correspondence was exchanged between the petitioners President L. C. Balling and university Director of Human Resources, Joan Tambling. The

conclusion of the correspondence was that the university would not recognize anybody in the bargaining unit with the less than so-called 100% appointment.

The University of New Hampshire (UNH) denied that its conduct in not recognizing certain positions in the bargaining unit who have less than a 100% appointment does not constitute an unfair labor practice. The UNH further denied that anyone teaching at 50% were eligible to vote in the election, in fact it was specifically understood that such faculty would vote subject to challenge and were in fact challenged and further responded that the certification refers to all full-time faculty. Further, the contested individuals are simply not full-time faculty in terms of their status or responsibilities. The individuals in contention are either part-time or temporary or both and as such are not part of the certified unit for these reasons the UNH has not violated the act in any way. UNH further in its response protested the filing of the charges against an individual only, i.e., Dale Nitzschke, President of the University and stated that individuals are not employers under 273-A and alleges that the petitioning party should have made reference to Dr. Nitzschke as an agent of the system and on that basis the charge should be dismissed.

Hearing on this matter was held on May 21, 1991 at the offices of the PELRB in Concord, New Hampshire.

Testimony was taken from Steven Fan who as Chairman of the Physics Department and from Gary Wulf and various individuals as to their time of employment and duties.

FINDINGS OF FACT

After reviewing all the oral and written testimony offered at the hearing on May 21, the Board makes the following findings:

1. The certification of the bargaining unit of the American Association of University Professors specifically included all full-time faculty members and did not include any part-time faculty members.
2. Those voters who were in question were permitted to vote under challenge during the election process. However, the votes were not counted as they would not become dispositive of the election results.
3. The positions involved in this complaint were specifically excluded from the bargaining unit by vote of this Board in its certification of the bargaining unit.
4. Testimony and exhibits offered did not in any way change the decision of the Board concerning the composition of the certified bargaining unit.
5. This Board refers the parties to Decision No. 91-55 with respect to the same issue, wherein, it stated without qualification only full-time faculty members were considered members of the bargaining unit.

ORDER

The petition of the American Association of University Professors to include certain part-time faculty members as part of the bargaining unit is hereby DISMISSED.

Signed this 31st day of October, 1991.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx and E. Vincent Hall present and voting.